

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 14, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on March 14, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

The first order of business was to swear in the newest Board member appointed by Governor Beshear, M. Suzanne "Sue" Cassidy, and reappointed member, Jackson M. Andrews. They were sworn in by General Counsel Boyce A. Crocker and welcomed by Chairman Higgins.

Board personnel present:

Greg Higgins, Chairman
Christine J. Goodmann, Vice-Chairman
Betty Gibson, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
M. Suzanne Cassidy, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Lisa T. Hendricks, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 15, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised the Board of the following:

- Mr. Sipek reported that he had written a letter to Representative Royce Adams, a copy of which has been provided to the members of the Board. The budget process is going forward. Mr. Sipek stated that the Board will operate on the same amount of funds as last fiscal year's budget for the next two years. The second year, when

the Board conducts an election, will be the most difficult. Based on past experience, the election costs between \$35,000-\$40,000. The Board is asking that “trigger language” once again be made a part of the Personnel Board’s budget, which Mr. Sipek said looks favorable. Mr. Sipek is optimistic that the Board will have funding for the election as it is a necessary governmental function. As far as day-to-day operations, it will be difficult over the next two years, but we will be able to conduct business as usual. However, the Board will have to watch the Hearing Officer’s contracts to ensure they are in line with the funds that are available.

- Mr. Sipek stated that the staff would be moving to 25 Fountain Place and walls were being torn down at 28 Fountain Place for the new Board Room. Once all the renovations are completed, the office will run more smoothly and the Board will pay less rent due to a decrease in square footage [after giving up 5 and 38 Fountain Place].
- As far as the Board’s proposed legislation, that did not go forward since the Board lacked a sponsor. However, the legislation incorporated in HB 134, Representative Cherry’s bill, did go forward. Mr. Crocker stated it passed the House.
- Mr. Sipek stated that he has provided the Board members with copies of court rulings [*Stephanie Disney v. Young, Timothy, Health & Family Services*, (2005-074) 06-CI-272, 2006-CA-002053]. The Court found both Mr. Young and the Personnel Board in default. The Board was in default for not filing a brief; however, that is not unusual since the Board does not usually file a brief. The Board is named as a party to an appeal so that it can certify the record and if the Court enters an order that changes the outcome, it can direct the Board to do things. Mr. Young, who retired from state government, was in default for not filing an answer or a brief and was late in obtaining counsel. Mr. Sipek stated that although he does not agree with the Court’s Order, it is an unpublished opinion and will not have a significant impact on what the Board does.
- Mr. Sipek stated that a report on selection methods from Commissioner Hawkins would be presented in the Personnel Cabinet’s report and he wanted to make a few introductory comments.
- Mr. Sipek welcomed Ms. Cassidy to the Board and welcomed Mr. Andrews’ return. Mr. Sipek hoped that former Board member Ms. Center would attend the April Board Meeting, as the Board had something to present to her.

Chairman Higgins asked Mr. Sipek about the “trigger” language and was it being considered. Mr. Crocker answered that it was now in the House for consideration. Chairman Higgins also asked about the need for video equipment, which was mentioned in the letter to Representative Adams. Mr. Crocker stated that the equipment was currently working, but was not in great shape. Chairman Higgins also asked about Representative Cherry’s bill, specifically the written reprimand language. Mr. Crocker answered that it “parrots” the language in the regulation. Mr. Sipek stated that the language would be included in the statutes as opposed to the regulations. Chairman Higgins stated that maybe next year the Board could start on legislation earlier, especially for housekeeping purposes. Mr. Andrews asked if Representative Cherry’s bill had language about simplifying the election procedures. Mr. Crocker stated that Representative Cherry followed the Board’s recommended language. Mr. Andrews stated that

the members of the General Assembly did not understand the convoluted election law and the expense involved to get merit employees to vote. Currently, only about 8 percent of merit employees vote. Mr. Andrews stated that the Board should do a better job to make it easier for merit employees to vote and at less expense. At the conclusion of Mr. Sipek's report, Chairman Higgins asked if there were any questions. With no further response, Chairman Higgins asked Mr. Sipek to present the introduction to the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

Mr. Sipek stated that he wanted to provide background to the selection method process. There are three methods in which to select an applicant to see if they meet the requirements for a given classification: Testing [written examination and "Top 5" score of applicants are listed], Qualifying [meet minimum qualifications for either experience and/or education required for the job classification] and Training and Experience [meet minimum qualification for experience and/or education and rate in the "Top 5" score]. In Mr. Sipek's estimation, "testing" is the preferred method based on the language that is contained in the statutes. Mr. Sipek stated that there have been a lot of changes to KRS Chapter 18A. What is important to the Personnel Board is that the language in the regulations states that if the Personnel Cabinet makes a change to the selection method for any particular classification, the Cabinet is to notify the Personnel Board. It is Mr. Sipek's understanding that changes in the selection method process have been on hold for some period of time while the Personnel Cabinet did a review of the system. The Personnel Cabinet, within the past few months, has made some changes which will be provided to the Board members next month. He hopes this background will provide the members with an explanation of what will be forthcoming.

Commissioner Carla Hawkins and Deputy Commissioner Barbara Barnes, Department for Personnel Administration, were present for the Personnel Cabinet.

Commissioner Hawkins stated that each Board member received a folder which contains information on the Personnel Cabinet's Selection Methods. She stated that the Department is responsible for the basic function that Staffing Services does for the Commonwealth, which is qualifying of candidates for eligibility to go to a certified register to be considered for employment by an agency. Commissioner Hawkins stated that Mr. Sipek did a great job in explaining the selection methods. She further explained that there are minimum qualifications for each classification: minimum experience or minimum education. There may also be substitution clauses that allow two years of experience to count for one year of education. Commissioner Hawkins stated that every qualified candidate meets either the minimum experience or the minimum education for a certain job classification. However, one concern the Cabinet had was that there are many applicants that meet the minimum experience or training but could not pass the written test or get in the "Top 5" score.

Commissioner Hawkins stated that the Department had the assistance of Ms. Goodman [who was independent of the Department and could be objective] to interview staff, review regulations and requirements, to determine the appropriate selection method, specifically as it pertains to "Testing" and "Training and Experience (T & E)." Mr. Andrews asked for clarification regarding the statement that applicants with training or education could not pass the test. Commissioner Hawkins explained that out of 1,336 active classifications only 110 require a written examination. One job classification requiring a written examination is Carpenter II. An applicant could meet the minimum qualifications for the classification, but either could not pass the test or could not make the "Top 5" score. An applicant cannot be considered for employment unless they meet the "Top 5" criteria, which is based by county where the job is located, not statewide. Deputy Commissioner Barnes advised that 19% of veterans are qualified for positions, but cannot achieve a passing score on tests. Commissioner Hawkins stated that the Cabinet is trying to determine if there are other methods that provide a better selection process. The Cabinet wants to ensure that an Agency has a large pool of qualified candidates from which to choose.

Written tests are specific to the classifications, but not specific to the job itself. Technologically, one difficulty is that the jobs are changing faster than the Cabinet can create tests. To have a valid test, Commissioner Hawkins stated that it takes a licensed psychometrician about six to eight weeks to perform a job analysis of an actual position, which requires a minimum of 15-20 subject experts to determine actual skills and abilities needed for the position. The Commonwealth cannot afford a staff of licensed personnel creating tests due to state budget constraints. Also, the Cabinet does not believe that testing is a valid method in determining whether an applicant's skills and abilities make him/her the best candidate for the job.

The Personnel Cabinet suggests using the qualifying method and eliminating T & E and written examinations. The Cabinet will help the agencies create an interview question bank that goes with what is best practiced. Further, a behavioral interview, reference checks and actual monitoring of a six-month probationary period, which Ms. Goodman's research found, were better methods in determining an applicant's qualifications than any T& E or written test that could be administered.

Commissioner Hawkins stated that Representative General Beavers (HB 57) is interested in increasing veterans in the workforce. Agencies would be required to offer up to five qualified veterans an interview for an open position. Mr. Crocker advised that HB 57 has passed the House.

Secretary Jackson has approved transition of the T& E Selection Method effective April 16, 2008, to the Qualifying Method and the Written Examination Selection Method effective May 16, 2008, to the Qualifying Method. The new system will only apply to new hires, because merit employees do not have to test. Chairman Higgins asked if the five criteria for hiring will still apply, which Commissioner Hawkins agreed they would.

5. ORAL ARGUMENTS

- A. Campbell, et al. v. Environmental and Public Protection Cabinet (EPPC)
and Personnel Cabinet (Request by Appellee)
--Motion of Appellants' to file Late Response to Personnel Cabinet's Exceptions
--Appellee Personnel Cabinet's Motion to Strike the Exceptions Filed by
Appellants as Untimely

Present were the Hon. LaTasha Buckner, counsel for Appellee EPPC; the Hon. Dinah Bevington, counsel for Appellee Personnel Cabinet; and the Hon. Dave Emerson, counsel for Appellants. Mr. Ronnie McDowell, *pro se*, appeared by telephone. [Note: Both Appellees objected to accommodating Appellant McDowell appearing by phone, because Mr. McDowell did not file exceptions. None of the Board members objected to Appellant McDowell appearing telephonically.]

After listening to the parties' arguments on the motion, Chairman Higgins made a motion not to accept the Appellants' late response to Appellant's exceptions. Mr. Andrews seconded and the motion carried 6-0.

The Board then heard oral arguments. The parties answered questions from the Board.

- B. Diane Compton v. Cabinet for Health and Family Services (Request by Appellee)

Present were the Appellant, Ms. Diane Compton, *pro se*, and the Hon. Sheila Redmon, counsel for Appellee, who had requested oral arguments.

6. MOTIONS

- A. Kent Jones v. Education Cabinet
--Appellant's Motion to Enforce Board's Order
--Appellee's Response to Motion to Enforce

Present were the Appellant, Kent Jones, *pro se*, and the Hon. Sue Simon, counsel for Appellee. The parties answered questions from the Board.

Chairman Higgins moved to accept the restoration of 40.75 hours as submitted by the Appellant to make him whole. Mr. Andrews seconded and the motion carried 6-0, with Chairman Higgins voting.

7. REQUESTS FOR INVESTIGATION

- A. Department of Public Advocacy – Unfair Promotion Practices (Inv. No. 08-01)
Request by Connie Bell (**Deferred from February**)

--Response by Dan Egbers, Personnel Cabinet
--Response by Mary Ann Palmer, General Counsel, DPA

Mr. Frazer moved to deny the request for investigation; Mr. Andrews seconded and the motion carried 5-0.

- B. Department of Veterans Affairs/Transportation Cabinet (Inv. No. 08-03)
Request by Rebecca Smith (**Deferred from February**)

--Response by Dennis Shepherd, Staff Attorney, Department of Veterans Affairs
--Response by Michael Nickles, Staff Attorney for Transportation Cabinet
--Second Response by Michael Nickles, Staff Attorney for Transportation

Cabinet

Present was the Hon. Mike Nickles, counsel for Appellee.

Mr. Frazer moved to investigate this matter; Ms. Gibson seconded and the motion carried 5-0.

8. CLOSED SESSION

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (12:15 p.m.)

Ms. Gibson moved to return to open session; Ms. Cassidy seconded, and the motion carried 5-0. (1:45 p.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Campbell, et al. v. Environmental and Public Protection Cabinet and Personnel Cabinet

Mr. Andrews moved to defer this matter to the next meeting of the Board. Ms. Goodmann seconded and the motion carried 5-0.

B. Diane Compton v. Cabinet for Health and Family Services

Mr. Andrews moved to note Appellee's exceptions, Appellant's Response and oral arguments and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

C. Damon Combs v. Finance and Administration Cabinet (Deferred from February)

Ms. Goodmann moved to note Appellee's exceptions and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent the Appellee reimburse Appellant for leave without pay, and dismissing the appeal to all other claims. Mr. Andrews seconded and the motion carried 5-0.

D. Jo Ann Searcy v. Justice and Public Safety Cabinet (Deferred from February)

Ms. Gibson moved to note Appellant's exceptions, Appellee's Response and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Mr. Andrews seconded and the motion carried 4-0, with Ms. Cassidy abstaining.

E. Joy Anderson v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order, with clerical corrections, sustaining the appeal to the extent that Appellant be considered as having been detailed to special duty and denying Appellant's appeal for reclassification. Mr. Andrews seconded and the motion carried 5-0.

F. Kyle Bosh v. Finance and Administration Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

G. Kristie Clayton v. Cabinet for Health and Family Services

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

H. Lisa Coats v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

I. James Drake v. Transportation Cabinet and Anthony Shannon

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 5-0.

J. Gary Gribbins v. Justice and Public Safety Cabinet

Mr. Andrews moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy abstaining.

K. Mary Morgan v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order sustaining to the extent a 5-day suspension. Mr. Andrews seconded and the motion carried 4-0, with Ms. Cassidy abstaining.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

- L. Elmer Ray Nelson, Jr. v. Personnel Cabinet
- M. Jennifer Ellis-Ontiveros v. Personnel Cabinet
- N. Walter Ivey v. Personnel Cabinet (2 appeals)
- O. Donald Morrison v. Personnel Cabinet and Transportation Cabinet
--Appellant's response untimely filed
- P. Larry Powell v. Justice and Public Safety Cabinet
- Q. Christy Saylor v. Personnel Cabinet
- R. April Whitson v. Justice and Public Safety Cabinet and Personnel Cabinet

Mr. Frazer moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Goodmann seconded and the motion carried 5-0.

10. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Cassidy seconded and the motion carried 5-0.

- A. Karen Branham v. Education Cabinet
- B. Robin Embry v. Personnel Cabinet (2 appeals)
- C. William Emral III v. Transportation Cabinet
- D. Ronald Fleming v. Personnel Cabinet
- E. Vicky Hall v. Environmental and Public Protection Cabinet and Health and Family Services Cabinet
- F. Jerry Howard v. Personnel Cabinet
- G. Albert Kurtz, Jr. v. Personnel Cabinet
- H. Cory Risk v. Transportation Cabinet
- I. William H. Stewart v. Transportation Cabinet
- J. George Bean v. Office of the Attorney General
- K. Edwin Clark v. Fayette County Property Evaluation Administrator
- L. Amy Hurley v. Personnel Cabinet
- M. Donald Winburn v. Justice and Public Safety Cabinet

11. SETTLEMENTS

Ms. Cassidy moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Gibson seconded and the motion carried 5-0.

- A. Rebecca Hunger v. Cabinet for Health and Family Services
- B. Adrienne Perkins v. Transportation Cabinet (mediation)
- C. Justin Rhodes v. Personnel Cabinet
- D. Amber Riley v. Justice and Public Safety Cabinet
- E. Candice Smith v. Environmental and Public Protection Cabinet
- F. Charles Holbrook v. Transportation Cabinet v. Smallwood
- G. Sheena Pettway v. Commerce Cabinet
- H. Barney Thompson v. Commerce Cabinet
- I. George Tokarchick, William Mudd and Jack Hancock v. Environmental and Public Protection Cabinet
- J. Claude Wilder v. Transportation Cabinet v. Smallwood

12. OTHER

Chairman Higgins advised that Mr. Crocker has passed out a copy of amendment to 101 KAR 1:335 to Board members. Mr. Crocker said that LRC reviewed the regulation and made suggested amendments to Section 5 (more than clerical changes). The changes do not change the substance of the regulation. The regulation did not get filed the way the subcommittee

wanted it, so the process has to start all over again. Mr. Crocker said he will have the Personnel Cabinet review and approve it. After Secretary Jackson approves the amendment, Mr. Crocker will get it filed with LRC.

Ms. Gibson moved to approve the amendment to 101 KAR 1:335. Mr. Frazer seconded and the motion carried 5-0.

There being no further business, Ms. Gibson moved to adjourn. Mr. Frazer seconded, and the motion carried 5-0. (1:58 p.m.)

Greg Higgins, Chairman

Christine J. Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa T. Hendricks, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member

M. Suzanne Cassidy, Member